

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION; AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS; ASSOCIATION OF AMERICAN PUBLISHERS; COMIC BOOK LEGAL DEFENSE FUND; HARVARD BOOK STORE, INC.; PHOTOGRAPHIC RESOURCE CENTER, INC.; PORTER SQUARE BOOKS, INC.; and MARTY KLEIN)
Plaintiffs,)
v.) Civil Action No. 10-11165
MARTHA COAKLEY, in her official capacity as ATTORNEY GENERAL OF THE COMMON- WEALTH OF MASSACHUSETTS; JONATHAN W. BLODGETT; TIMOTHY J. CRUZ; ELIZABETH D. SCHEIBEL; WILLIAM R. KEATING; WILLIAM M. BENNETT; JOSEPH D. EARLY, JR.; MICHAEL O'KEEFE; DAVID F. CAPELESS; DANIEL F. CONLEY; C. SAMUEL SUTTER and GERARD T. LEONE, JR. in their official capacities as MASSACHUSETTS DISTRICT ATTORNEYS,) Judge Rya W. Zobel
Defendants.)

**ASSENTED-TO MOTION FOR LEAVE TO FILE A FURTHER AFFIDAVIT IN
OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

The defendants hereby respectfully move this Court for leave to file an additional affidavit in opposition to plaintiffs' motion for a preliminary injunction. In support of this motion, the undersigned counsel state as follows:

1. This case presents a complex challenge to the constitutionality of M.G.L. c. 272, §§ 28, 31, as amended by Sections 2 and 3 of the Acts of 2010 (the "Amended

Statute”), prohibiting the dissemination to a minor of matter deemed harmful to minors.

2. Plaintiffs filed a Motion for a Preliminary Injunction on July 27, 2010. *See* Dkt # 19.
3. Defendants opposed the motion on August 26, 2010. *See* Dkt # 27. On that date, defendants also filed affidavits from the eleven District Attorney’s offices, concerning a review of prosecutions under the Amended Statute that each performed.
4. The undersigned counsel has since obtained an affidavit from Thomas D. Ralph, Chief of the Attorney General’s Cybercrime Division (the “Affidavit”), concerning a similar review performed by the Attorney General’s Office.
5. The hearing on plaintiff’s motion for a preliminary injunction is scheduled for October 19, 2010.
6. The undersigned counsel circulated the Affidavit to counsel for plaintiffs on Friday, October 15, 2010.
7. The undersigned counsel conferred with Michael A. Bamberger, counsel for plaintiffs, and he assents to this motion.

WHEREFORE, the defendants respectfully request that this Court grant them leave to file the Affidavit of Thomas D. Ralph, attached hereto.

Respectfully submitted,

Counsel for Defendants:

MARTHA COAKLEY
ATTORNEY GENERAL

Assented to:

Counsel for Plaintiffs:

s/ Michael A. Bamberger

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Dated: October 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 18, 2010.

/s/ Jessica V. Barnett
Jessica V. Barnett (BBO No. 650535)
Assistant Attorney General